

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LAWRENCE OGBECHIE,  
Plaintiff,  
  
v.  
  
R COVARRUBIAS, et al.,  
Defendants.

Case No. [5:18-cv-00121-EJD](#)

**ORDER GRANTING MOTION TO  
DISMISS**

Re: Dkt. No. 65

Defendant Officers R. Covarrubias, P. Soto, M. Thomas and N. Walker (collectively, “Defendants”) move to dismiss the First Amended Complaint (“FAC”) filed by Plaintiff Lawrence Ogbechie (“Plaintiff”) for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1367(c)(1) and 28 U.S.C. § 1367(c)(3). Dkt. No. 65 (“Motion”). The Court took the matter under submission without oral argument pursuant to Civil Local Rule 7-1(b). Having considered the Parties’ papers the Court **GRANTS** Plaintiff’s Motion.

**I. Background<sup>1</sup>**

Plaintiff is a psychiatrist who worked as a contract medical provider at Salinas Valley State Prison (“SVSP”). On May 8, 2017, Plaintiff was attacked by one of his inmate patients during a session in Plaintiff’s office at SVSP. On January 5, 2018, Plaintiff brought the instant suit

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<sup>1</sup> The facts of the underlying dispute are laid out in full in the Court’s Order Re Defendants’ Motion for Summary Judgment. *See* Dkt. No. 62. The Court recounts only the facts relevant to this motion here.

alleging that the SVSP correctional staff failed to adequately protect him during the attack. The gravamen of Plaintiff's suit is that Defendant Covarrubias should have been observing Plaintiff's treatment session with the inmate, that the failure to observe and monitor the session allowed the attack to occur uninterrupted, and that Plaintiff suffered increased physical injury because of the late intervention. Plaintiff further alleges such monitoring was provided for by that the Operational Procedures in place at SVSP.

On June 27, 2020, Plaintiff filed the operative First Amended Complaint. Dkt. No. 40 ("FAC"). The FAC contained two counts: (1) a claim under 42 U.S.C. § 1983 for violation of the Fourteenth Amendment to the U.S. Constitution, FAC ¶¶ 27-32; and (2) a claim for common law negligence under California law, *id.* ¶¶ 33-39. Both counts were brought against all Defendants in their personal capacities. *Id.* p. 5-6. Fact discovery concluded in October 2019, and Defendants moved for summary judgment in January 2020. Dkt. No. 50. On June 11, 2020, this Court granted summary judgment as to Plaintiff's Section 1983 claim (Count 1), and denied summary judgment as to Plaintiff's negligence claim (Count 2). Dkt. No. 62. Plaintiff filed a motion for reconsideration, which the Court denied. Dkt. No. 64.

On August 14, 2020, Defendants filed the present motion to dismiss for lack of subject matter jurisdiction, arguing that the Court should decline to exercise supplemental jurisdiction over Plaintiff's common law negligence claim now that all federal claims have been dismissed. Dkt. No. 65. Plaintiff opposes the motion. Dkt. No. 66.

## **II. Discussion**

Defendants argue that Plaintiff's negligence claim should be dismissed for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1367(c)(1) and 28 U.S.C. § 1367(c)(3), and because it is barred by 11th Amendment sovereign immunity.

### **a. Section 1367(c)(3)**

Where a district court has dismissed all claims over which it has original jurisdiction, it may decline to exercise supplemental jurisdiction over remaining state law claims. 28 U.S.C. § 1367(c)(3); *see also Sanford v. Member Works, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010). "The

1 decision whether to continue to exercise supplemental jurisdiction over state law claims after all  
2 federal claims have been dismissed lies within the district court's discretion." *Foster v. Wilson*,  
3 504 F.3d 1046, 1051-52 (9th Cir. 2007).

4 "Despite the fact that the issue is committed to the court's discretion, the Court of Appeals  
5 for the Ninth Circuit has repeatedly counseled district courts to decline to exercise supplemental  
6 jurisdiction over state-law claims after the federal claims have been dismissed before trial."  
7 *Meniooh v. Humboldt Cty.*, No. 20-CV-05634-RMI, 2020 WL 5526609, at \*5 (N.D. Cal. Sept. 15,  
8 2020); *see, e.g., Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985) ("Generally, dismissal of  
9 federal claims before trial dictates that the pendent state claims should also be dismissed."); *Souch*  
10 *v. Howard*, 27 F. App'x 793, 795 (9th Cir. 2001) ("When all federal claims have been dismissed  
11 before trial, the interests promoted by supplemental jurisdiction are no longer present, and a court  
12 should decline to exercise jurisdiction over state-law claims."). This is because "in the usual case  
13 in which all federal-law claims are eliminated before trial, the balance of factors to be considered  
14 under the pendant jurisdiction doctrine—judicial economy, convenience, fairness, and comity—  
15 will point toward declining to exercise jurisdiction over the remaining state-law claims." *Sanford*,  
16 625 F.3d at 561.

17 The Court granted summary judgment in favor of Defendants on all of Plaintiff's federal  
18 law claims. Because the Court has now dismissed all claims over which it has original  
19 jurisdiction, the Court has discretion to decline jurisdiction over Plaintiff's remaining state law  
20 claim. In accordance with the weight of Ninth Circuit precedent, the Court finds it appropriate to  
21 exercise that discretion here, and to dismiss the remaining state law claim for lack of jurisdiction.

22 Plaintiff argues that considerations of fairness, judicial economy, and convenience weigh  
23 in favor continuing jurisdiction because the case has been pending in this Court for over two years  
24 and is now on the eve of trial. Although this case was previously set for trial in November 2020,  
25 the Court notes that all upcoming trial schedules have been and will continue to be significantly  
26 affected by the COVID-19 crises. *See* General Order 73. The Court has already vacated the trial  
27 dates in this case and does not anticipate that it will be in a position to hear the case in the near

1 future. In light of these changed circumstances, the Court does not find any unfairness in  
2 dismissing the suit and allowing Plaintiff to bring his case in state court.

3 Plaintiff next argues that the “incessant foot-dragging practiced by the defendants’  
4 employer” throughout this litigation has caused significant delays, such that it would be  
5 prejudicial to Plaintiff to require him to re-file his claim in state court at this late stage. The Court  
6 acknowledges Plaintiff’s frustration at needless delays in the discovery process, however, Plaintiff  
7 does not indicate that any further or duplicative discovery would need to be done in state court.  
8 Thus, the Court does not find that these prior delays will result in any prejudice to Plaintiff  
9 moving forward.

10 In support of its argument that the delay in the case weighs in favor of maintaining  
11 jurisdiction, Plaintiff cites to *Trustees of the Construction Indus. & Laborers Health & Welfare*  
12 *Trust v. Desert Valley Landscape & Maint., Inc.*, in which the Ninth Circuit reversed the district  
13 court’s dismissal for lack of supplemental jurisdiction where the case was in its “third year” and  
14 was on the brink of trial. 333 F.3d 923, 926 (9th Cir. 2003). In that case, the district court had  
15 dismissed a state claim pursuant to Section 1367(c)(3) after granting default judgment on the  
16 related federal claims. The Ninth Circuit held that “the exercise of discretion was not authorized  
17 by § 1367(c)(3)” because the “federal claim here was not dismissed,” but rather, default judgment  
18 has been granted in favor of Plaintiff. *Ibid.* The Ninth Circuit went on to state that even if the  
19 district court had discretion, dismissing the case when the parties were “essentially done with trial  
20 preparation” was not fair to the parties or an efficient use of judicial resources. *Ibid.* Unlike in  
21 *Trustees*, the federal claim in this case was dismissed on the merits and the Court therefore has  
22 discretion to dismiss the pendent state claim. Moreover, the Court has not yet invested resources  
23 in preparing the case for trial and the Parties do not claim to be done with trial preparation.  
24 Therefore, the Court finds that judicial economy would be better served by dismissing the suit and  
25 allowing it to proceed in state court.

26 Finally, Plaintiff argues that the state courthouse in Monterey, California is less convenient  
27 for him than the federal courthouse in San Jose, California because he lives in Los Angeles. The

1 Court notes that Monterey and San Jose are approximately equidistant from Los Angeles and that  
2 there appear to be a number of direct flights from Los Angeles to Monterey every day. Therefore,  
3 the Court finds that a trial in state court would be equally convenient for the Parties.

4 Because considerations of comity and judicial economy weigh in favor of dismissing the  
5 state claim, and because the Court finds no undue inconvenience or unfairness to the Parties by  
6 doing so, the Court **DISMISSES** the case for lack of subject matter jurisdiction pursuant to  
7 Section 1367(c)(3).

8 **a. Section 1367(c)(1)**

9 Defendants also argue that dismissal is proper under Sections 1367(c)(1), which provides  
10 that a district court “may decline to exercise supplemental jurisdiction over a [related state claim]  
11 if . . . the claim raises a novel or complex issue of State law.” 28 U.S.C. § 1367(c)(1). Defendants  
12 argue that Plaintiff’s remaining claim should be dismissed because it raises a novel question of  
13 state law, which is whether a state employee can “be held liable in a tort action under California  
14 law solely for breaching work-related duties that do not constitute an independent basis for tort  
15 liability?” Motion, p. 4. Plaintiff argues that this question mischaracterizes Plaintiff’s theory of  
16 the case and that, in fact, there is nothing novel about the “garden variety negligence issues” raised  
17 by his remaining claim. Opp., p. 1. The Parties spend a substantial portion of their briefing  
18 arguing the merits of the negligence claim in order to establish that the issues are or are not novel  
19 under California law. Given the Court’s decision to dismiss the case under Section 1367(c)(3)  
20 discussed above, the Court does not find it appropriate to reach the Parties’ arguments about the  
21 merits of the negligence claim.

22 **a. 11th Amendment Immunity**

23 Defendants assert that the claim should be dismissed because it is barred by 11th  
24 Amendment immunity. The Court previously rejected this argument in its June 11, 2020 order  
25 granting in part and denying in part Plaintiff’s motion for summary judgment, holding expressly  
26 that the 11th Amendment does not bar Plaintiff’s negligence claim. Dkt. No. 62. The Court  
27 declines to reconsider its prior decision here.

**III. Conclusion**

Defendants' motion to dismiss is **GRANTED** and the case is **DISMISSED** for lack of subject matter jurisdiction pursuant to 28 U.S.C. 1367(c)(3). All pretrial deadlines and hearing dates are **VACATED**. The Clerk shall close the file.

**IT IS SO ORDERED.**

Dated: October 2, 2020



EDWARD J. DAVILA  
United States District Judge